

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ERIC LYNCH,

Plaintiff,

v.

6:23-CV-1454
(GTS/DJS)

COUNTY OF HERKIMER; JEFFREY S. CARPENTER,
Herkimer County District Atty.; DARRYL LUCAS,
Environmental Conservation Police Officer;
RUSSELL FETTERMAN, Environmental Conservation
Police Officer; MATTHEW JACOBY, Environmental
Conservation Police Lt.; and STATE OF NEW YORK,

Defendants.

APPEARANCES:

ERIC LYNCH, 18-B-0755
Plaintiff, *Pro Se*
Elmira Correctional Facility
P.O. Box 500
Elmira, New York 14902

GLENN T. SUDDABY, United States District Judge

DECISION and ORDER

Currently before the Court, in this *pro se* civil rights action filed by Scott Phillip Lewis (“Plaintiff”) against the State of New York, the County of Herkimer and the four above-captioned individuals (“Defendants”), is United States Magistrate Judge Thérèse Wiley Dancks’ Report-Recommendation recommending that Plaintiff’s claims against Defendant Lucas, Defendant Fetterman, Defendant Jacoby, Defendant Carpenter and Defendant State of New York be dismissed without leave to amend, and that Plaintiff’s claims against Defendant County of Herkimer be dismissed with leave to amend. (Dkt. No. 9.) Plaintiff has not filed an Objection

to the Report-Recommendation and the time in which to do so has expired. (*See generally* Docket Sheet.)

After carefully reviewing the relevant papers herein, including Magistrate Judge Dancks' thorough Report-Recommendation, the Court can find no clear error in the Report-Recommendation:¹ Magistrate Judge Dancks employed the proper standards, accurately recited the facts, and reasonably applied the law to those facts. As a result, the Report-Recommendation is accepted and adopted in its entirety for the reasons set forth therein.

ACCORDINGLY, it is

ORDERED that Magistrate Judge Dancks' Report-Recommendation (Dkt. No. 9) is **ACCEPTED** and **ADOPTED** in its entirety; and it is further

ORDERED that Plaintiff's claims against Defendant Lucas, Defendant Fetterman, Defendant Jacoby, Defendant Carpenter and Defendant State of New York are **DISMISSED** **with prejudice**; and it is further

ORDERED that the remaining claims in Plaintiff's Complaint (Dkt. No. 1) – i.e., his claims against Defendant County of Herkimer – **shall be DISMISSED with prejudice** and without further Order of this Court **UNLESS**, within **THIRTY (30) DAYS** of entry of this Decision and Order, Plaintiff files an **AMENDED COMPLAINT** that cures the pleading defects

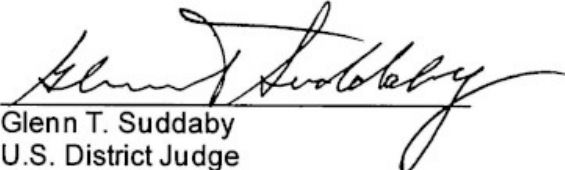
¹ When no objection is made to a report-recommendation, the Court subjects that report-recommendation to only a clear error review. Fed. R. Civ. P. 72(b), Advisory Committee Notes: 1983 Addition. When performing such a "clear error" review, "the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." *Id.*; see also *Batista v. Walker*, 94-CV-2826, 1995 WL 453299, at *1 (S.D.N.Y. July 31, 1995) (Sotomayor, J.) ("I am permitted to adopt those sections of [a magistrate judge's] report to which no specific objection is made, so long as those sections are not facially erroneous.") (internal quotation marks omitted).

identified in the Report-Recommendation; and it is further

ORDERED that, should Plaintiff wish to file an Amended Complaint in this matter, the Amended Complaint must be a complete pleading which will supercede and replace his original Complaint in all respects, and may not reassert any claims that have been dismissed with prejudice; and it is further

ORDERED that, should Plaintiff file a timely Amended Complaint, the Amended Complaint be returned to Magistrate Judge Dancks for further review pursuant to 28 U.S.C. § 1915.

Dated: May 31, 2024
Syracuse, New York


Glenn T. Suddaby
U.S. District Judge